

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHARLES CARL,

Plaintiff,

v.

MBNA AMERICA BANK NA,

Defendant.

Civil Action No. 05-918-SLR

**DEFENDANT'S MOTION TO TAKE
DEPOSITION OUT OF TIME**

Defendant MBNA America Bank, N.A. ("Defendant"), through undersigned counsel, hereby moves for leave to take the deposition of Michael Haley and to subpoena certain medical records beyond the discovery deadline, and in support thereof, states as follows.

1. On or about December 29, 2005, Plaintiff Charles Carl ("Plaintiff") filed a Complaint in this Court against Defendant alleging that Defendant terminated his employment in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.* (*See Docket Entry 1.*) Defendant subsequently filed an Answer and the Court entered its initial Scheduling Order on August 4, 2006. (*See Docket Entries 4 and 9, respectively.*) Following certain revisions to the Scheduling Order, discovery is currently set to close on May 30, 2007. (*See Docket Entry 32.*)

2. During the discovery period, Defendant has completed its discovery in this matter, including having taken all of the depositions it believes are necessary other than that of Michael Haley, Plaintiff's counselor from the ARC of Delaware, an organization that provides support services for individuals with developmental disabilities. Mr. Haley was involved in Plaintiff's

placement with Defendant and communicated with Defendant's employees regarding Plaintiff's job performance.

3. Defendant has actively attempted to schedule Mr. Haley's deposition since March 2007. After placing several phone calls to Mr. Haley without response, in early April 2007, Defendant was advised by Mr. Haley's supervisor that he was on medical leave through May 6, 2007, and would be unavailable for deposition during that time. On May 6, 2007, Defendant again attempted to contact Mr. Haley at his place of employment without success. After a subsequent phone call, Defendant was advised by Mr. Haley's supervisor that his medical leave had been extended through at least July 2, 2007, and that there was no other individual employed by the ARC of Delaware who was actively involved with Plaintiff.

4. Thus, Defendant respectfully requests that it be granted leave to take Mr. Haley's deposition beyond the discovery deadline upon his return from medical leave, or at such time as he is capable of providing a deposition in this matter. Defendant also requests that Plaintiff be barred from obtaining an affidavit from Mr. Haley in order to oppose any dispositive motion filed by Defendant if Defendant has been unable to depose Mr. Haley as a result of his medical leave.

5. Additionally, on May 1, 2007, Defendant sent Plaintiff's Counsel a request that he have his client sign and return a release for Plaintiff's medical records from MeadowWood Behavioral Health System from 1995 to the present. These records are relevant to Plaintiff's claims in this case. MeadowWood will not produce Plaintiff's records without this release. To date, Defendant has not received Plaintiff's signed release and, therefore, has been unable to subpoena Mr. Carl's records from MeadowWood. Thus, Defendant requests that it be granted leave to subpoena Plaintiff's medical records from MeadowWood beyond the discovery deadline upon receipt of Plaintiff's executed release, and that Plaintiff be ordered to sign the proffered release.

6. Granting the requested relief will not prejudice either party and will ensure that the parties are equally prepared for any dispositive motions that may be required in this case, or in the event of trial.

For the foregoing reasons, Defendant MBNA America Bank, N.A. respectfully requests that its Motion be granted and that the Court entered the proposed Order attached hereto.

Respectfully submitted,

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Dated: May 24, 2007

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CHARLES CARL,

Plaintiff,

v.

MBNA AMERICA BANK NA,

Defendant.

Civil Action No. 05-918-SLR

ORDER

Upon consideration of Defendant's Motion to Take Deposition Out of Time, any Opposition thereto, and all other matters of record, it is this ___ day of _____, 2007:

ORDERED, that Defendant's Motion be and hereby is GRANTED; and it is further

ORDERED, that Defendant MBNA America Bank, N.A. may take the deposition of Michael Haley beyond the May 30, 2007 discovery deadline upon his return to work at the ARC of Delaware, or at such other time as he is capable of providing a deposition in this matter; and

it is ORDERED that Plaintiff may not rely on an affidavit prepared by Mr. Haley in opposition to any dispositive motion filed by Defendant until such time as Defendant has taken Mr. Haley's deposition or has determined that no deposition of Mr. Haley is necessary; and it is further

ORDERED, that Defendant may subpoena Plaintiff's medical records from MeadowWood Behavioral Health System beyond the discovery deadline upon receipt of Plaintiff's executed release for those records, which Plaintiff is hereby ORDERED to sign and return to Defendant promptly upon receipt of this Order.

Hon. Sue L. Robinson
United States District Judge